

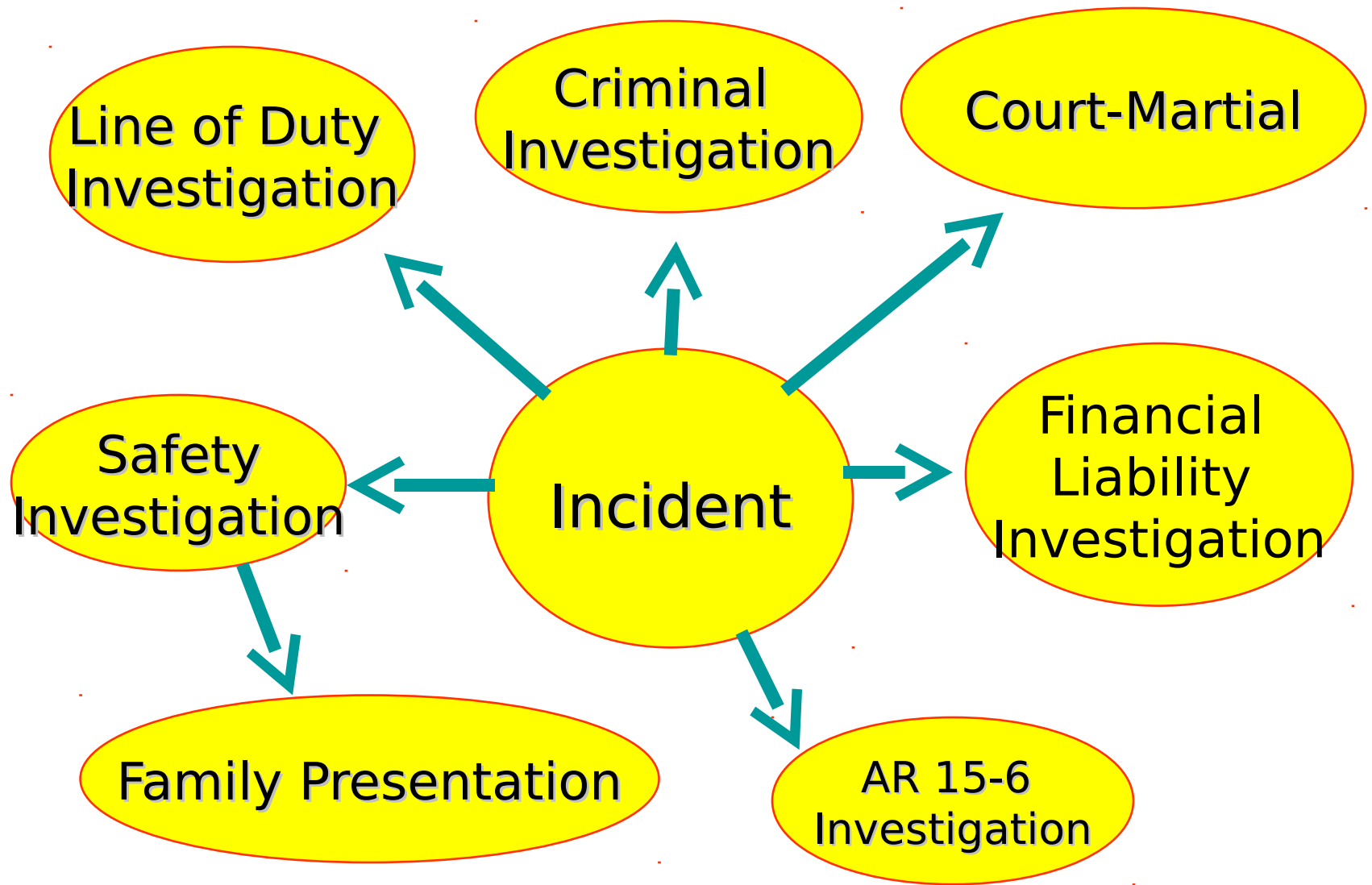
Administrative Investigations

Administrative Investigations

Commanders have the
inherent authority to investigate
any matter under their
responsibility, unless otherwise prohibited
or limited, if undertaken for the purpose
of furthering the good order and
discipline of their command

**Key to
Success**

Do them
Do them right
Do them right
away



Agenda/References

- AR 15-6, *Procedure for Investigating Officers and Boards of Officers*, 2 October 2006
- AR 385-10, *The Army Safety Program*, 23 August 2007 (RAR 14 June 2010)
- AR 600-8-4, *Line of Duty Policy, Procedures, and Investigations*, 4 September 2008
- AR 600-34, *Fatal Training/Operational Accident Presentations to the Next of Kin*, 2 January 2003

Army Regulation 15-6

- Provides guidance on the conduct of investigations
- General and specific application to various investigations
- Use AR 15-6 when:
 - Whenever an appointing authority needs a complete investigative report containing facts and recommendations
 - When regulations require it

AR 15-6 Investigation

- A Commander's information tool to collect facts, make findings, and obtain recommendations
- Two Types
 - Formal
 - Informal
 - More flexible, less time and resource intensive, simple, preferred over formal

Who May Initiate a AR 15-6 Investigation: The Appointing Authority

- **Formal**
 - GCMCA/SPCMCA
 - Any general officer
 - GS-14 (or above) agency head or division chief
- **Informal**
 - Anyone who can appoint a formal
 - Any commander
 - Principal staff officer in the grade of major or above

Special Situations

- Only a **GCMCA** may appoint an AR 15-6 if:
 - Property damage of \$1M or more;
 - Loss or destruction of Army aircraft or missile;
 - Injury or illness likely to result in death or permanent total disability;
 - Death of one or more persons; or
 - Death of one or more persons by friendly fire
- Check local policies and regulation supplements for additional guidance

Special Situations: Hostile Death

- All hostile deaths must be investigated (AR 600-8-1)
 - Appointed by GCMCA but authority can be delegated to SPCMCA in writing (AR 15-6)
 - Investigation must be forwarded to Casualty and Mortuary Affairs Operation Center (CMAOC) within 60 days of initiation (MILPER Message 07-233)
- Field grade officer must review all initial casualty reports (AR 600-8-1/MILPER Message 07-233)
- Units and CID must report all death investigations to the CMAOC (AR 600-8-1)

Special Situations: Suicide

- All suicides and suspected suicides must be investigated (AR 600-63)
- Appointed by GCMCA (AR 15-6)
- Investigation must conform to guidance in Army Directive 2010-01 (26 Mar 10)
 - Coordination with CID, medical examiner, mental health provider, Line of Duty officer
 - Lines of inquiry
 - Completed investigation must provide recommendations to prevent future suicides

Special Situations:

Friendly Fire

- Friendly Fire (Vice Chief of Staff May 2007 Guidance)
 - Emphasis and Additional Training on Friendly Fire Fatality Procedures
- Friendly Fire Injury (MILPER Message 07-236)
 - Friendly fire injuries must be reported to CID and the Combat Readiness/Safety Center
 - Friendly fire injuries must be investigated the same as friendly fire fatalities

Friendly Fire

DODI 6055.07: A circumstance in which members of a U.S. or friendly military force are mistakenly or accidentally **killed or injured** in action by U.S. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force

Units must report and investigate all suspected friendly fire incidents as soon as evidence leads personnel on the ground to believe that friendly fire may be involved

Friendly Fire Procedures

- **Provide immediate telephonic notice** through the Casualty Assistance Center to the Army Casualty and Mortuary Affairs Operation Center (CMAOC)
- **Generate an initial (INIT) casualty report** through command channels to combatant commander
- **Initiate AR 15-6 investigation**
 - Appointed by Combatant Commander or his/her designee
 - Normally delegated to the GCMCA
 - Must be approved by Combatant Commander

Friendly Fire Procedures (continued)

- **Contact the Combat Readiness/Safety Center** and initiate safety investigation - *subject to Combatant Commander discretion*
- **Contact the local CID Detachment**
- **Submit supplemental (SUPP) casualty report** when there is a substantial change to the initial report
- Once approved by the Combatant Commander, **submit AR 15-6 proceedings to CMAOC**
- **Coordinate with CMAOC** to provide a presentation to the family for fatality cases

How to Appoint: The Appointment Memorandum

- Written appointment is preferred
- Describe the facts as they are known at the time
- Be specific in what the investigating officer is to accomplish
- Give adequate guidance and special instructions

Whom to Appoint: The AR 15-6 Investigating Officer

- Grade
 - Commissioned/warrant officer
 - GS-13 and above
- Senior to person under investigation
- **Best qualified** by reason of education, training, experience, length of service, and temperament

Conducting the Investigation

- Mandatory legal brief
- Must be thorough and impartial
- Using an investigative plan will help
 - Who, what, where, when, why, and how
- Rules of evidence generally do not apply – **evidence must be relevant and material**
 - Limits: Privileged communications, evidence of polygraph only with consent of subject, no involuntary admissions, no bad faith searches (formal proceedings)

Concluding the Investigation

- Facts
 - Clear, concise, and readily deduced from the evidence in the record – should refer to a piece of evidence
- Findings
 - **Preponderance of the evidence**
(more likely than not)
- Recommendations
 - Consistent with the findings

Legal Review

- Required for
 - Serious/complex cases
 - When adverse action is contemplated
 - When the investigation is relied upon by higher HQ
- Determine
 - Whether the proceedings comply with legal requirements and the appointment memo
 - What effects any errors have
 - Whether sufficient evidence supports the findings
 - Whether the recommendations are consistent with the findings

Appointing/Approving Authority Action

- Appointing/approving authority may
 - Approve as is
 - Disapprove
 - Return for additional investigation
 - Substitute findings and recommendations
- Recommendations
 - Treat just as findings, approving/disapproving them accordingly
 - Become final agency decision once approved and thus may be released under the Freedom of Information Act
- Corrective action

AR 385-10 Safety Accident Investigations

- Function of safety accident investigation is to **prevent future accidents**, it cannot be used to take adverse action
- Anticipate multiple investigations into same incident, each serving specific purpose
 - Safety, AR 15-6, criminal, line of duty

Classes of Accidents

- **Class A:** Damage totaling \$2M or more; accidents involving aircraft; injury/occupational illness resulting in fatality or permanent total disability (includes friendly fire incidents)
- **Class B:** Damage between \$500k - \$2M; injury/occupational illness resulting in permanent, partial disability; 3 or more personnel hospitalized in a single occurrence
- **Class C:** Damage between \$50k - \$500k; injury/occupational illness resulting in loss of one day of work beyond the day of injury/illness
- **Class D:** Damage between \$2k - \$50k; injury/occupational illness resulting in restricted work, transfer, medical treatment greater than first aid
- **Class E Aviation Accident:** An accident in which the resulting total cost of property damage is less than \$2k
- **Class F Aviation Incident:** Aircraft turbine engine damage because of unavoidable internal or external foreign object damage, where that is the only damage

Accident Investigations

- Two Types
 - **Safety Accident Investigation**
 - IAW AR 385-10
 - Boards convened by GCMCA; Cdr, USARC (USAR); State Adjutant General (ARNG) for serious incidents
 - **Legal Accident Investigation**
 - IAW AR 385-10 and other regulations
 - Serious incident investigations convened by GCMCA due to the nature of the event

Legal Accident Investigations

- AR 15-6, AR 600-34, AR 385-10
- Required for
 - All Class A accidents, to include cases of friendly fire
 - As directed by the SJA IAW the claims regulation
 - On accidents where there is a potential claim or litigation for or against the government or government contractor
 - On accidents with a high degree of public interest or anticipated disciplinary or adverse administrative action
- **Used to obtain and preserve all available evidence for use in litigation, claims, disciplinary action, or adverse administrative action**

Priority and Sharing

- Priority: Criminal (CID), safety, legal (AR 15-6)
- Safety can access the criminal and legal
- Safety investigations will not be enclosed in any other report (not shared)
- But, can share common-source documents, photographs, and those documents (other than witness statements) containing purely factual information

Army Regulation 600-34

Family Presentation

- Purpose of the presentation is to provide results of fatal accident investigations and confirmed cases of suicide to the next of kin
- Must be conducted within 30 days after completion of investigation
- Conducted by an O6 in chain of command
 - Chaplain, Casualty Assistance Officer
 - Others as needed (PAO, SJA, Medical, Interpreter)

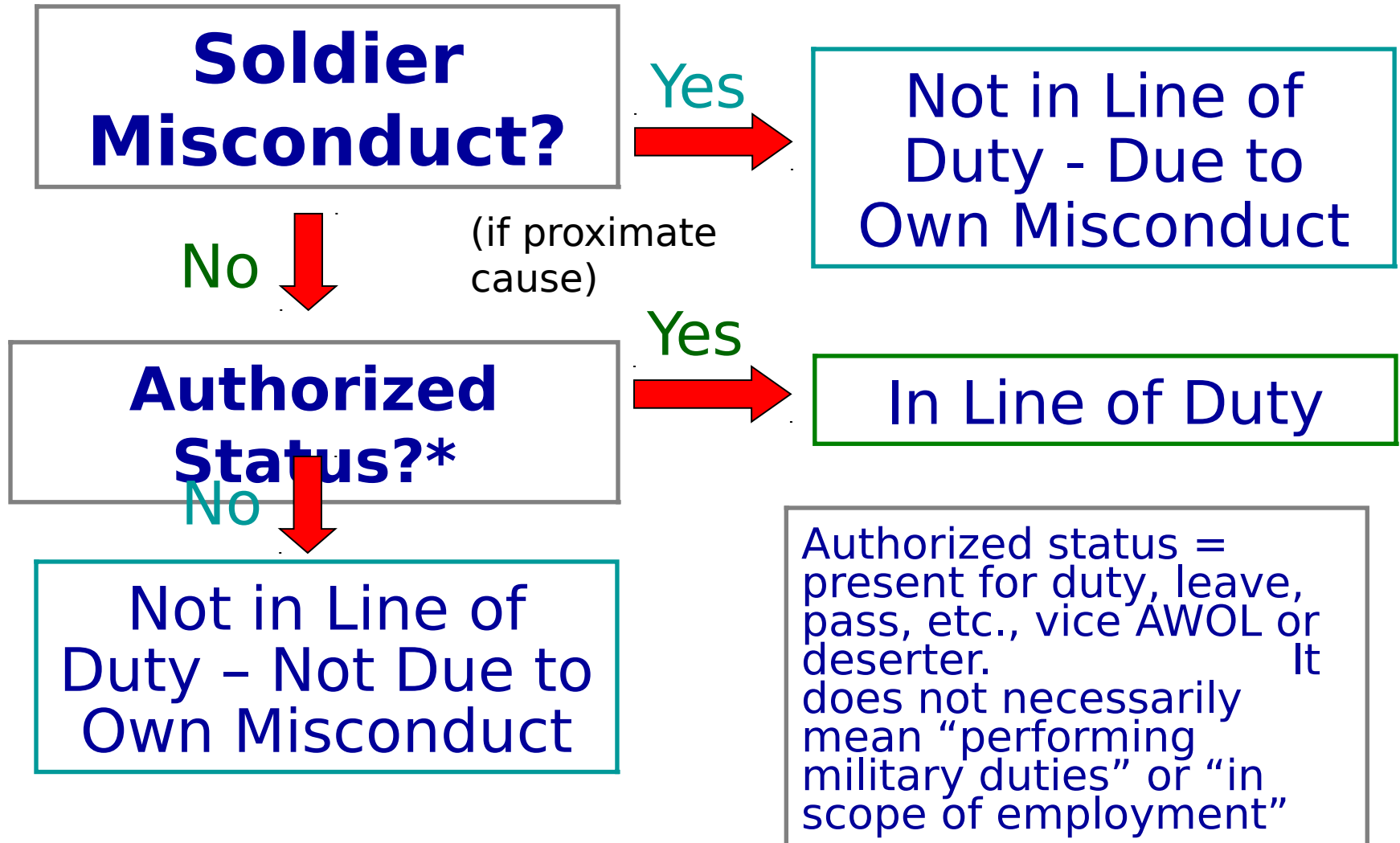
AR 600-8-4 Line of Duty Determination/Investigation

- Line of duty determination required when service is interrupted by injury, disease, or death
- Purpose is to protect the interest of the individual and the United States

Three Possible Outcomes (and consequences)

- In line of duty
 - May receive - Army Disability Retirement, Separation Compensation, DVA Compensation & Hospitalization, Incapacitation Pay (USAR & ARNG)
- Not in line of duty – Not due to own misconduct
 - May lose - disability retirement, separation compensation, DVA disability or hospitalization, civil service preference
- Not in line of duty – Due to own misconduct
 - Must make up lost days, lost days excluded from longevity and retirement pay computations, forfeit pay (for days lost due to disease resulting from intemperate use of drugs/alcohol), loss of disability retirement and severance pay, loss of DVA benefits

Line of Duty Analysis



Presumptions

- Presume ILD without investigation:
 - Disease (exceptions)
 - Enemy action or terrorist attack
 - Death from natural causes
 - Death as passenger on common commercial carrier or military aircraft
 - Superficial injuries with no lasting significance

Informal Investigation

- **Informal**: Company commander performs and signs **DA Form 2173** and provides to appointing/approving authority
 - No misconduct or negligence suspected
 - Medical Treatment Facility (MTF) rep and commander sign a DA Form 2173
 - Appointing/Approving authority: Special Court-Martial Convening Authority
 - Can only result in a finding of ILD (except when medical doctor finds condition existed prior to service –EPTS)

Formal Investigation

- **Formal**: IO appointed, findings and recommendations on **DD Form 261**
 - Strange or doubtful circumstances
 - Injury or death involving drugs or alcohol abuse
 - Self-inflicted injuries/Suicide
 - Injury/death while AWOL
 - Appointing authority: Special Court-Martial Convening Authority
 - Approving authority: General Court-Martial Convening Authority

Formal Investigation (cont.)

- Soldier presumed in line of duty
- Contrary finding must be rebutted by substantial evidence, under a preponderance standard
- Soldier not required to make a statement against interest
- Soldier afforded notice and opportunity to rebut adverse findings
- Legal review for all formal investigations

Financial Liability Investigations of Property Loss (FLIPL)

(AR 735-5 / DA Pam 735-5)

FLIPL

- Mandatory FLIPL
- Initiating the FLIPL
- Short FLIPL

Conducting the FLIPL Investigation

- Financial Liability Officer (FLO)
 - Senior to person investigated
 - Commissioned officer, warrant officer, SFC or above, GS-7 or above
- Investigation
 - Mandatory briefing
 - Thorough and impartial

Liability

- Loss
- Responsibility
- Culpability
- Proximate cause

Approving Authority

- LDD less than \$100,000: first 0-6 or GS-15 in the rating chain
- LDD of \$100,000 or more or loss of controlled item: first General Officer or SES in the rating chain.

Additional Issues

- Suspension of Favorable Personnel Actions (Flags) (AR 600-8-2)
 - “Suspension of favorable personnel actions is mandatory when an investigation (formal or informal) is initiated on a soldier by military or civilian authorities.”

Questions?